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June 30, 1997

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JUN 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: 

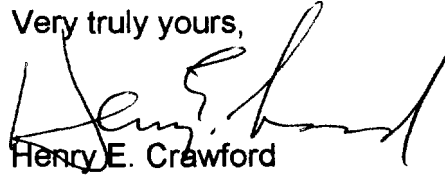
In the Matter of Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Llano and Marble Falls, Texas) MM Docket No. 95-49; RM-8558
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Dear Mr. Caton:

Transmitted herewith on behalf of Roy E. Henderson and Tichenor License Corporation are an original and four (4) copies of a "Motion for Stay of Proceedings" as directed to the Chief, Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,

  
Henry E. Crawford  
Counsel for  
Roy E. Henderson

cc: The Chief, Allocations Branch

W. H. L. Files rec'd  
L. H. L. J. E.

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations.  
(Llano and Marble Falls, Texas)

MM Docket No. 95-49  
RM-8558

To: The Chief, Allocations Branch

**MOTION FOR STAY OF PROCEEDINGS**

Roy E. Henderson ("Henderson") and Tichenor License Corporation ("Tichenor") (collectively "Joint Movants"), by counsel, pursuant to 47 CFR §1.45 respectfully submit their *Motion for Stay of Proceedings*, seeking to stay the effectiveness of Report & Order, DA 97-1115, released May 30, 1997 in MM Docket No. 95-49, RM-8558 ("Report & Order"). In support thereof, the following is stated:

**I. INTRODUCTION**

1. On May 30, 1997, the Commission, by its Chief, Allocations Branch, issued the Report & Order. In the Report & Order, the Commission dismissed a previously filed counterproposal offered jointly by the Joint Movants in response to the proposed allotment of Channel 242A at Llano, Texas.

2. On this date, Joint Movants have filed a petition for reconsideration styled: *Joint Petition for Reconsideration - Roy E. Henderson and Tichenor License Corporation* ("Petition for Reconsideration"). In accordance with Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders, 11 FCC Rcd 9501 (1996), Joint

Movants hereby request that the Commission stay the effectiveness of the Report & Order until such time as the Commission resolves all of the issues raised on reconsideration.

## **II. ARGUMENT**

3. The four factors considered in determining whether or not a stay is warranted are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F. 2d 921, 925 (DC Cir. 1958). Applying those factors to the present case, the Joint Movants submit that a stay is indeed warranted.

### **A. Likelihood of Success**

4. As demonstrated in the Petition for Reconsideration, the Report & Order was predicated upon several mistaken assumptions. The Commission found that the Missouri City portion of the joint counterproposal should have been filed at the time that comments and counterproposals were due in response to a 1995 Notice of Proposed Rulemaking. However, as amply demonstrated in the Petition for Reconsideration, that counterproposal could not have been filed at that time since it is not mutually exclusive in relation to that counterproposal. Moreover, it is mutually exclusive with the channel allotment specified in the 1996 Further Notice of Proposed Rulemaking. Consequently, and as set out in greater

detail in the Petition for Reconsideration, the counterproposal should have been accepted by the Commission.

5. Additionally, the Commission misconstrued Tichenor's firm commitment to apply for a facility at Menard, Texas. As noted in the Petition for Reconsideration, there can be no logical or factual reason for failing to honor Tichenor's commitment to apply for the Channel as a new allotment and build the facility in the event that Tichenor is awarded the construction permit.

6. In view of the above, the Report & Order is likely to be reversed and the counterproposal of the Joint Movants allowed to go forward. Therefore, the Joint Movants have met this prong of the Virginia Petroleum Jobbers test.

**B. Irreparable Harm**

7. Unless the Report & Order is stayed, parties will be allowed to file for a Channel 242A at Llano. Indeed, the filing window is scheduled to open on July 14, 1997 and close on August 14, 1997. If competing applications are accepted and the Commission later reverses the Report & Order, the rights of several parties, including the Joint Movants will be irreparably harmed.

**C. Harm to Others**

8. As noted above, if other applicants are permitted to file in the July-August filing window, they will suffer harm to the extent that they will have expended legal and engineering costs associated with application preparation. If the Report & Order is reversed, those costs would be lost forever. On the other hand, staying the Report & Order would allow the present proceeding to come to a definitive conclusion. This would be of greater benefit to all potential third party filers.

#### **D. Public Interest**

9. From the above items it is clear that the public interest favors the grant of a stay. The parties to this proceeding would benefit from having the proceeding resolved in an orderly manner. Third parties would also benefit from knowing that there would be no jeopardy in filing for whatever Channel or Channels are eventually allotted. Finally, the Commission would not be placed in the confusing situation of having to return the filing fees of third parties in the event that the Report & Order is overturned on reconsideration.

#### **III. CONCLUSION**

10. Prior to Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders a stay of the type sought by the Joint Movants would have been automatic. In removing the automatic stay, the Commission sought to achieve efficiencies in cases where all potential parties would know about the pending appeal and could assess their risks accordingly. In the present case, third party filers may not be aware of the pending Petition for Reconsideration. Moreover, the Joint Movants have shown all of the elements required for a stay, including the likelihood of success on appeal. Given this showing it would be particularly unjust to open a filing window and irretrievably alter the legal and practical circumstances of several parties. Therefor, the Joint Movants hereby request a stay of the Report & Order.

**WHEREFORE**, the Joint Movants respectfully request a stay of the effectiveness of Report & Order, DA 97-1115, released May 30, 1997 in MM Docket No. 95-49, RM-8558.

June 30, 1997

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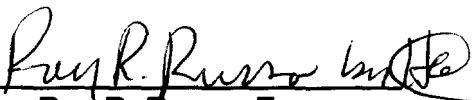
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Respectfully Submitted,

Roy E. Henderson

By:   
Henry E. Crawford  
His Attorney

Tichenor License Corporation

By:   
Roy R. Russo, Esq.  
Its Attorney

**CERTIFICATE OF SERVICE**

I, Henry E. Crawford, do hereby certify that copies of the foregoing Motion for Stay of Proceedings have been served by United States mail, postage prepaid this 30th day of June, 1997 upon the following:

\*John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications  
Commission  
2025 M Street, N.W.  
Washington, D.C. 20554

\*Ms. Pam Blumenthal  
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